

From: Greenblatt, Mark
Sent: Wednesday, August 7, 2013 5:19 PM
To: Marc Hamburg

Hi Marc,

I am glad you got my message. We are working on a story about Berkshire's assumption of liability from other insurance companies of asbestos and pollution related claims. My understanding is Berkshire has been pretty open about how it uses "the float" from these transactions – money Berkshire holds that is eventually slated to be paid out in insurance claims to others, to invest and essentially gain returns on... before those funds have to eventually be paid out in a claim to someone. Mr. Buffett has written about this often in his letters to shareholders.

While the letters speak to the investment side of what is happening, as you may also be aware, there have also been a series of lawsuits and arbitrations in recent years alleging bad faith claims handling... on the operational side... by two of Berkshire's wholly owned subsidiaries: National Indemnity Company and Resolute Management. The crux of the allegations: that NICO, Resolute, and Berkshire are deliberately trying to delay or deny claims payments for as long as possible to maximize profits from "the float," which can be invested for longer periods of time.

While many of the suits and arbitrations are active and ongoing-others have already been settled or resulted in jury verdicts or arbitration rulings. I'd like to begin our conversation with the cases that are no longer active.

The purpose for Scripps reaching out to you is to actively seek Berkshire, NICO, and Resolute's perspective on all of this. I'd like to have a conversation as soon as possible to learn more about how Berkshire and its subsidiaries view the float, and view the allegations that have either been ruled on, settled, or that are pending. I will do all I can to help get Berkshire's perspective here so Scripps may gain a complete and comprehensive perspective on this important topic. If I have an incomplete understanding – an inaccurate understanding-- or if I just don't understand something important, I want to be sure I work with you to give Berkshire every chance to help clarify things in advance of any story we may report.

Two people we are interested in interviewing: Mr. Buffett (we would like to speak with him for a more global view on this issue, and to ask about statements he has made on float or these sorts of reinsurance deals related to asbestos that he has publicly commented on in the past) and Tom Ryan, who I understand is an executive with Resolute, NICO, and Berkshire Hathaway's Reinsurance Group. We are also interested in speaking with anyone else you think may be informative on this matter.

It's important we connect as soon as possible though. I am happy to make myself available now or anytime today to assist in next steps.

All best, Mark Greenblatt

From: Ajit Jain

Sent: Thursday, August 08, 2013 11:02 AM

To: Greenblatt, Mark

Subject: Upcoming Scripps News National bureau story on Berkshire and affiliates

Marc Hamburg forwarded me the e-mail you sent him yesterday. As the person responsible for the businesses that you referred to, I would like to have an opportunity to respond to you by e-mail. However, as I am "on the road", I was wondering if I could respond to you early next week.

Please let me know.

Ajit Jain

From: Greenblatt, Mark

Sent: Thursday, August 08, 2013 2:01 PM

To: 'Ajit Jain'

Subject: RE: Upcoming Scripps News National bureau story on Berkshire and affiliates

Thank you for your message. I connected with your assistant Beverly this morning (some of this may be easier to arrange with a short conversation) but as we have deadlines to meet, I thought I would write as well. As you are aware, many of the aspects of reinsurance and float are complex. This is why we have asked for an interview. A discussion will be much more instructive than a volley of emails going back and forth. Ultimately a natural conversation and a few follow up questions on something you might say also benefits the public— as everyone is able to get a better understanding and it is done in an open and transparent manner.

I am happy to meet you on the road early next week wherever you are to help facilitate. Does this sound good? Let's please lock in a good time today for both of our schedules next week.

Mark

From: Ajit Jain
Sent: Monday, August 12, 2013 3:41 PM
To: Greenblatt, Mark
Subject:

Mark:

Thank you for reaching out to us to gain a better understanding of our run-off operation. Your inquiry appears to be based on a perception that our run-off operation is riddled by bad faith litigation concerning our claims practices, driven by a perceived strategy to enhance float, presumably at the risk of bad faith findings, punitive awards and our corporate reputation. That is a perception that does not square with reality, but we understand that in the commercial insurance marketplace, particularly that sector of it that deals with asbestos claims, there are powerful vested interests that prefer to see claims settled at inflated levels rather than defended. Indeed, we are aware of presentations in various conferences where insinuations are made about our business practices that echo some of the same concepts referenced in your email.

In any case, we offer the following points for your information.

- I. Our Run-off Business: As you note, and as our Chairman has written about in his annual letters to shareholders, one of the significant businesses within our reinsurance division is our run-off operation. Put simply, this is the business of reinsuring (or outright acquiring) largely long-tail liabilities of other insurers that wish to exit a line of business. The larger transactions of this business have been structured as reinsurance contracts (as opposed to acquisitions), have been completed by our National Indemnity Company ("NICO"). We assume very significant financial risk in these transactions, and as part of them we customarily also take on the right and responsibility to manage the underlying claims. That management is performed by our run-off administrator, Resolute Management. Our administrative responsibilities in this regard require us to fulfill important duties owed to several constituencies, including: the policyholders that are insured within the underlying portfolios; the insurers whose responsibilities to those policyholders we have reinsured; the claimants seeking recoveries against the policyholders; the third party reinsurers who continue to have financial exposure to the portfolios we administer, etc. Maintaining the highest standards of ethical practices to meet these responsibilities is incumbent upon us for many reasons, including the fact that we are a large insurance group that writes business around the world, and few insurance organizations have a higher reputational concern than we do. In administering these books, then, we need to be vigilant to pay valid claims, protect valid insurance policy defenses, and in the many

instances where reasonable minds differ, seek to achieve reasonable compromises where possible. Our clients, their policyholders, our regulators, and our shareholders expect nothing less.

The run-off portfolios we manage are complex and include many sophisticated policyholders and many sophisticated claimants' lawyers pursuing claims against those policyholders, so disputes are as common in our run-off portfolio as they are in the insurance business, and given the long-tail nature of our portfolios, coverage disputes implicated by asbestos and pollution claims are common occurrences. Of the over 60 run-off transactions we have completed, at least 25 involve long-tail asbestos, pollution and health hazard claims. We have a significant presence, then, in the asbestos and pollution tort litigation arenas. The Resolute US operation includes over 4,500 policyholders, and as is the case with any insurance company, the vast majority of claims are settled without trials. We have been in the run-off business now for over fifteen years, and our *annual* payments for claims and expenses now exceed \$2.4 billion, with over \$1.4 billion of that sum paid in respect of asbestos. Since we started in the run-off business, our payments for claims and expenses total to over \$20 billion.

This underscores the benefit that our transactions have been to underlying policyholders and claimants, as well. There is no impediment on our ability to pay valid claims and resolve even complex issues efficiently and fairly. There is of course a serious *disincentive* for our failing to do so--our reputational concerns and profile in the regulated marketplace being chief among them, but even if these were not serious issues for us, the fact is that bad faith claims practices ultimately cost insurers more money, both in terms of legal fees and exposure one would have to a provable pattern of such conduct. Unlike other entities that focus solely on run-off business, our group's large and growing presence in the worldwide insurance markets for ongoing business far exceeds our run-off operation. The importance of our reputational interests in those markets makes the professional handling of run-off business a major priority for us, as compared to companies with no ongoing reputational concerns.

Resolute's largest single run-off portfolio is Equitas, the reinsurer of the run-off liabilities of Lloyd's of London. At the time that transaction was negotiated in 2007, we had already become an established participant in the run-off business, and enjoyed a strong reputation among counter-parties for our capabilities at professionally managing long-tail liabilities. Indeed, we are the only the partner that was considered by Lloyd's for the Equitas transaction, a compelling fact given Lloyd's concern for its

reputational interests. As with all the run-off transactions we have done, the vast majority of payments have been outside the context of coverage litigation, and since that transaction was completed, the payments we have made in respect of this one transaction total over \$3 billion.

You asked about bad faith claims. Allegations of bad faith claims handling have become common in US coverage litigation, and utilized as leverage by sophisticated policyholder counsel, the allegations are far more common than any actual findings. We do not maintain statistics of the industry's bad faith litigation, but in terms of our affairs, the following are the facts: (1) as of today, in approximately 12% of the pending coverage actions in which one or more of our portfolios are involved, there are allegations of bad faith asserted against various insurers, including portfolios we manage; and (2) against all of Resolute's settlements and litigations over the 15 plus years we have managed our growing run-off business, there have been four instances where insurers whose claims we manage were found to have taken unreasonable positions—none of those involve a failure to settle an underlying claim, but instead involve contested coverage positions with policyholders. Some of them, as you note, are still pending. In the aggregate, any payments plus expected payments in resolution of such situations is extremely de minimus in the overall portfolio.

In other cases, policyholders have filed claims directly against NICO and/or Resolute on the grounds that our exercise of our contractual right and obligation to administer our run-off portfolios constituted a tort as to that policyholder, or constituted an actionable interference with that policyholder's contracts with its original insurer. Most such claims have been dismissed on the ground that we are contractually bound as agent to our clients to administer their business; some have survived motions to dismiss and are still pending.

It is important to note that across our reinsured portfolios, our counterparties (i.e., the insurers whose liabilities we manage) have substantial input into how and what we do. Whether or not we are technically required to obtain their consent prior to taking a coverage position, we work closely with our counterparties; we take their input seriously for all sorts of pragmatic reasons, and in fact I cannot think of an example where we have taken a position that our counterparty would have not taken, or did not in fact endorse.

- II. Float. We could not improve upon the transparent treatment of this topic given by our Chairman in his annual letter to shareholders, but given the implication of your email that the concept is connected to a practice of bad faith claims handling by our group, we would be remiss is not explaining that there are essentially two ways in

which all insurance companies can generate income by taking on financial risk: (1) by making an underwriting profit (that is, by paying out less under a particular policy than the premium paid for the risk; and (2) investment income (that is, earning a return on funds that permits the insurer to both pay claims and return a profit). The value of this investment income is explicitly factored into the pricing of insurance and reinsurance, and therefore the value of float is passed on to the buyers of (re)insurance in the form of lower prices.

Reserves are provisions set by insurers that are intended to reflect the value of claims that it will ultimately have to pay out, even if not for a long time. Thus our Chairman has explained to shareholders that until the time those reserves are actually paid out as claims, the insurer has the opportunity and the obligation to invest those funds.

Your email suggests a direct link between the concept of float and the run-off business, but float is a concept that applies to all insurance businesses (indeed, there are other insurers that have significantly more “float” than our group), and thus there is no greater significance to the concept in the case of run-off business than there is in any insurance concept. It is not unique to our business, nor is it in the case of our business an incentive to employ bad faith practices, for all the reasons explained above.

Mark, you were kind enough to take the initiative to contact us, so I have taken some time to offer you as comprehensive a statement as I can on the issues you have raised. If there is a specific factual point on which you need or want clarification, I will try once again to be responsive and comprehensive, but in terms of in-person interviews, I must decline your request. You should not take it personally, however, because my personal practice for years has been to avoid giving interviews about our business.

Very truly yours,

Ajit Jain, President

Berkshire Hathaway Reinsurance Division

Sent from Windows Mail

From: Greenblatt, Mark

Sent: Friday, August 16, 2013 1:24 PM

To: Ajit Jain

Subject: Scripps follow up for upcoming story on Berkshire/Resolute/Float

Dear Mr. Jain,

Thank you so much for your note. I am sorry to hear you have declined our invitation for an interview but please know Scripps will always welcome your participation and afford you a chance to do one at any time should you change your mind. As noted in an earlier email I sent you—allowing journalists the chance to engage in actual conversations with Berkshire on matters this complex allows for a greater understanding of the subject, better reporting for the public, and a true sense of openness and transparency. The public is always better off when this is allowed. While we remain hopeful you, Mr. Buffett, or Tom Ryan will change your mind, for now we will respect your preferences and will offer the questions below.

Please answer the questions as they are numbered. If you prefer not to answer something, please just say so in the appropriate question area.

1. First, just a matter of housekeeping. In your thoughts from your last note- are you speaking just for Berkshire's Reinsurance Division? Or- are you speaking for Mr. Buffett as well? As you know, part of our story will deal with statements he has made about float and its application to the deals at issue. It is of course incumbent upon us to clarify if we need to reach out to him directly (beyond request previously filed through your colleague) or if you have authority to speak for him on this issue. In that regard, I suppose I should also just clarify if Mr. Buffett and Mr. Ryan are also both declining our offers of interviews? I ask this out of a true sense of trying to be as fair and diligent as possible to everyone who may be named in our upcoming story.
2. While you have expressed that you personally do not like to do interviews, we wanted to go the extra mile to attempt to get representation of some kind voicing Berkshire's perspective *on camera* --in a similar manner to how others will appear in the story on television. In that regard, is there an insurance industry association who could perhaps can add more balance or perspective on camera for our television audience—that you believe can speak to the matters we are discussing? If so, please put us in touch without delay.
3. You have mentioned this week that "We have a significant presence, then, in the asbestos and pollution tort litigation arenas." Are you aware of any company that has a larger presence in the asbestos and pollution tort litigation arenas? Do you believe you do a better job, the same job, or worse job in handling these types of claims, compared to others in your industry or compared to the insurance firms you are taking over management of the claims from?
4. In regards to bad faith claims in general, you note that "against all of Resolute's settlements and litigations over the 15 plus years we have managed our growing run-off business, there have been four instances where insurers whose claims we manage were found to have taken unreasonable

positions—none of those involve a failure to settle an underlying claim, but instead involve contested coverage positions with policyholders.”

- a) What are the names of the four cases you mention here?
- b) Does this statistic include arbitrations as well? If not- how many times have arbitrations determined your companies have taken unreasonable positions?
- c) By ‘unreasonable’- I am assuming you are referring to a finding of bad faith? Or is it something else you mean?

5. Many of the people we have spoken with for this story have stated that Resolute/NICO/Berkshire go to unusual lengths to seal underlying evidence and sworn depositions when something unfavorable comes to light.

Clearly, there are some good times and justification to keep items or testimony confidential. But does Resolute attempt to issue some protective orders/seal some depositions in an effort to keep its activities – or criticism- out of the public light?

6. In regards to float-- your note to me this week states, “...the value of float is passed on to the buyers of (re)insurance in the form of lower prices.”

This appears to be a significant shift from many years worth of statements from Mr. Buffett – who has repeatedly said the float is for Berkshire Hathaway’s benefit. In just two of those instances, he has said:

"We will profit just as we would if some party deposited \$70.6 billion with us, paid us a fee for holding its money and then let us invest its funds **for our own benefit.**" (emphasis added) And he defines float this way: "This business produces "float"-- money that doesn't belong to us, but that we get to invest **for Berkshire's benefit.**" (emphasis added)

So is Mr. Buffett correct – or has Berkshire recently decided to stop allowing float to benefit itself going forward?

7. Who is it specifically that Berkshire is passing on lower prices to from the benefits it makes on its float—as it relates to that acquired from its asbestos/pollution deals? Is it the insurance firms such as Lloyds, AIG, Utica, etc.,-- who Berkshire has done past business with-- and who it may do future business with? Is it other insurance firms who may have yet to transact a similar deal- but who might get future lower prices as a result of Berkshire’s profits in float? Or are you saying profits from Berkshire’s float— are actually returned to the insurance firms you cut deals with to assume their liabilities (Lloyds, AIG, Utica)- in a manner that they can offer future lower prices to corporations seeking new insurance?

8. A number of corporations across America are alleging in lawsuits Berkshire's runoff deals have resulted in a serious "breach of contract." Many have stated they feel deceived by both their insurance company and Berkshire. One case involves Pepsi. (Pepsi-Cola Metropolitan Bottling Company, Inc et al v. Insurance Company of North America, Inc et Al). In this case, Pepsi did not find out until sworn testimony was offered during a lawsuit with its insurer during 2010- that Resolute/NICO had in fact taken over handling the liability and managing the claim years prior to that.

What is your position on the benefits of either informing, or not informing the affected companies—that both the liability and the management of the claim is now the hands of your companies?

9. What is your explanation or response to on the jury finding in the Celanese case in Massachusetts (a jury found Resolute had committed a willful – unfair or deceptive act towards Celanese). What internal actions were taken to prevent further willful acts? Have there been significant management changes at Resolute since this ruling? Are changes necessary in your view?
10. In any of the Berkshire related roles Mr. Ryan holds (in his capacities at Resolute, NICO, or as an executive with the reinsurance division)- how is he evaluated? How is he paid? Are there performance based incentives of any kind in place- or have their been in the past? What are the areas he can perform on now (or in the past) that would trigger any additional compensation or incentives?

We remain very thankful for your time and consideration and look forward to your response and would request you get back to us by **next Tuesday, August 20th or before**. To reinforce, we continue to welcome the chance to include a full interview with you on camera should you or anyone at Berkshire be interested.

Mark Greenblatt

Scripps News

Washington D.C.

From: Ajit Jain

Sent: Tuesday, August 20, 2013 4:57 PM

To: Greenblatt, Mark

Mark:

I know you are anxious for interviews, and I am not trying to make your job any harder. I also know you recognize that we do not typically give interviews, especially about ongoing businesses that involve our clients, and if we start to do so it becomes that much more difficult to tell others that we take seriously our policy on interviews with the press.

That said, I don't disagree with your comments about journalists' efforts, and responsibility, to get information correct. As a result, I have tried to respond as best I can below to the points you asked about.

With respect to your reporting, I trust you will apply your well-known skeptical instincts to all aspects and sources of your investigation. I have tried to explain our economic and social rationale of our run-off business. Your sources for negative comments regarding our business will have their own economic and social rationales for their comments and I am hopeful you will critically examine their assertions in that light, just as I anticipate you will do with us. I trust you will not allow the fact that others are willing to provide on-camera interviews to skew your conclusions as to their merits as opposed to our unwillingness appear in front of your camera.

Regards,

Ajit Jain

Dear Mr. Jain,

Thank you so much for your note. I am sorry to hear you have declined our invitation for an interview but please know Scripps will always welcome your participation and afford you a chance to do one at any time should you change your mind. As noted in an earlier email I sent you—allowing journalists the chance to engage in actual conversations with Berkshire on matters this complex allows for a greater understanding of the subject, better reporting for the public, and a true sense of openness and transparency. The public is always better off when this is allowed. While we remain hopeful you, Mr. Buffett, or Tom Ryan will change your mind, for now we will respect your preferences and will offer the questions below.

Please answer the questions as they are numbered. If you prefer not to answer something, please just say so in the appropriate question area.

1. First, just a matter of housekeeping. In your thoughts from your last note- are you speaking just for Berkshire's Reinsurance Division? Or- are you speaking for Mr. Buffett as well? As you know, part of our story will deal with statements he has made about float and its application to the deals at issue. It is of course incumbent upon us to clarify if we need to reach out to him directly (beyond request previously filed through your colleague) or if you have authority to speak for him on this issue. In that regard, I suppose I should also just clarify if Mr. Buffett and Mr. Ryan are also both declining our offers of interviews? I ask this out of a true sense of trying to be as fair and diligent as possible to everyone who may be named in our upcoming story.

While I am declining interviews on behalf of me and my colleagues including Mr. Buffett, in all other respects my comments are on behalf of me and the Division only, and not on behalf of Mr. Buffett or Berkshire Hathaway Inc.

2. While you have expressed that you personally do not like to do interviews, we wanted to go the extra mile to attempt to get representation of some kind voicing Berkshire's perspective *on camera* --in a similar manner to how others will appear in the story on television. In that regard, is there an insurance industry association who could perhaps can add more balance or perspective on camera for our television audience—that you believe can speak to the matters we are discussing? If so, please put us in touch without delay.

I am hopeful that my comments will give you an understanding of our perspective on the issues you have inquired about, but inasmuch as we have declined your request for on camera interviews, it wouldn't be right for me suggest the names of others to be interviewed to voice a perspective consistent with ours.

3. You have mentioned this week that "We have a significant presence, then, in the asbestos and pollution tort litigation arenas." Are you aware of any company that has a larger

presence in the asbestos and pollution tort litigation arenas? Do you believe you do a better job, the same job, or worse job in handling these types of claims, compared to others in your industry or compared to the insurance firms you are taking over management of the claims from?

Without the benefit of any published financial analysis to rely upon, I do believe we have the largest single exposure to asbestos and pollution claims of any insurer today. And while that size alone likely makes us a greater target for criticism, when it comes to claims management (which includes not only the adjustment of the injured parties' allegations, but also the assurance that all contractual obligations are met), I hope and believe that day-to-day we are doing a better job in managing the liabilities under our transactions than the manner in which they were being managed before we were involved.

4. In regards to bad faith claims in general, you note that "against all of Resolute's settlements and litigations over the 15 plus years we have managed our growing run-off business, there have been four instances where insurers whose claims we manage were found to have taken unreasonable positions—none of those involve a failure to settle an underlying claim, but instead involve contested coverage positions with policyholders."

- a) What are the names of the four cases you mention here?
- b) Does this statistic include arbitrations as well? If not- how many times have arbitrations determined your companies have taken unreasonable positions?
- c) By 'unreasonable' - I am assuming you are referring to a finding of bad faith? Or is it something else you mean?

As your reporting has likely uncovered, assertions of "bad faith" against insurance companies is a common tactic employed by opposing counsel and we consider the actual findings of bad faith against us by either arbitrators or juries to be rare especially considering the number of allegations made.

For the reasons I have already mentioned, I don't wish to get into details of matters that typically involve the names of our counter-parties, but I was including arbitrations within my response. In (c), your assumption is correct; when I said unreasonable I meant to say that there was a bad faith judgment based on a position that was found to be unreasonable.

5. Many of the people we have spoken with for this story have stated that Resolute/NICO/Berkshire go to unusual lengths to seal underlying evidence and sworn depositions when something unfavorable comes to light.

Clearly, there are some good times and justification to keep items or testimony confidential. But does Resolute attempt to issue some protective orders/seal some depositions in an effort to keep its activities – or criticism- out of the public light?

Obviously, I don't know who the "many people" are, or what is meant by unusual lengths (if I did I might be able to answer more specifically). Nonetheless, I know that we have sought to minimize the disclosure of our business partners' confidential information in proceedings where their files are at issue, but it is often the case that parties we are in litigation with seek to keep their materials or the proceedings confidential, as well. So I don't believe we have a practice of keeping materials confidential as they apply to Resolute for the purpose of keeping our activities out of the public light. (If we did have such a practice – which we don't - one would have to conclude we are not very good at it.) As far as I can tell, both our activities, which are in open claims litigations, and criticism of us, which we have no ability to control, appear to be readily available for your review.

6. In regards to float-- your note to me this week states, "...the value of float is passed on to the buyers of (re)insurance in the form of lower prices."

This appears to be a significant shift from many years worth of statements from Mr. Buffett – who has repeatedly said the float is for Berkshire Hathaway's benefit. In just two of those instances, he has said:

"We will profit just as we would if some party deposited \$70.6 billion with us, paid us a fee for holding its money and then let us invest its funds ***for our own benefit.***" (emphasis added) And he defines float this way: "This business produces "float"-- money that doesn't belong to us, but that we get to invest ***for Berkshire's benefit.***" (emphasis added)

So is Mr. Buffett correct – or has Berkshire recently decided to stop allowing float to benefit itself going forward?

It is the case that both Mr. Buffett's statements and mine are correct. I know this might seem confusing, and I suspect that the source of the confusion can be found in the requirements of Statutory Accounting Principles, so I will try and explain it as simply as I can without too much technicality: say there are two situations, and in both we (the risk bearer) are expecting to pay out \$100 in claims. In situation (1), we expect that the \$100 will be paid out within a few years of policy inception. In situation (2), it is expected that the \$100 will be paid out many years after policy inception. The price we would charge for the policy in situation (1) will be higher than the price we would charge for the policy in situation (2). This is because in situation (2) we will reduce the price to account for the time value of money. Coming to Mr. Buffett's point, in both situation (1) and situation (2), the economics and pricing are different, but Statutory Accounting Principles

require us to carry the same \$100 reserve in both cases. This is what is referred to as float. Float, and the price charged by the risk-bearer, are two very different concepts.

7. Who is it specifically that Berkshire is passing on lower prices to from the benefits it makes on its float—as it relates to that acquired from its asbestos/pollution deals? Is it the insurance firms such as Lloyds, AIG, Utica, etc.,-- who Berkshire has done past business with-- and who it may do future business with? Is it other insurance firms who may have yet to transact a similar deal- but who might get future lower prices as a result of Berkshire's profits in float? Or are you saying profits from Berkshire's float— are actually returned to the insurance firms you cut deals with to assume their liabilities (Lloyds, AIG, Utica)- in a manner that they can offer future lower prices to corporations seeking new insurance?

Generally, the way float works in the insurance business is that a significant portion of the benefit is passed on to the counter-parties of the risk-bearers, whether policyholders or insurance companies or reinsurance companies. In my example, you are correct that I was referring to our counter-parties, in that the pricing of our transactions reflected time value of money concepts.

8. A number of corporations across America are alleging in lawsuits Berkshire's runoff deals have resulted in a serious "breach of contract." Many have stated they feel deceived by both their insurance company and Berkshire. One case involves Pepsi. (Pepsi-Cola Metropolitan Bottling Company, Inc et al v. Insurance Company of North America, Inc et al). In this case, Pepsi did not find out until sworn testimony was offered during a lawsuit with its insurer during 2010- that Resolute/NICO had in fact taken over handling the liability and managing the claim years prior to that.

What is your position on the benefits of either informing, or not informing the affected companies—that both the liability and the management of the claim is now the hands of your companies?

Your question includes a statement that many corporations feel deceived by our approach. . I don't know who the people are who feel deceived, but I know our practices—for a long list of good reasons—are designed to avoid any confusion at all, let alone deception. First, you should know that when Resolute assumes administration of claims, we need to openly communicate that to policyholders and reinsurers alike, in order to be able to do our jobs. Attached are examples of form letters that Tom Ryan's shop has used to inform policyholders about Resolute's involvement. In addition, it is the case that our counter-parties frequently publicize our transactions. Attached are press releases issued by AIG and Equitas as examples; others have sent similar announcements. In terms of our ability to administer claims properly, and in the interests of our counter-parties' ongoing businesses with their policyholders, it is always important that Resolute's involvement be proactively communicated to all concerned.

As for the statement that Pepsi did not find out until testimony in a lawsuit in 2010 that Resolute was managing their claims, this is inconsistent with the facts. In 2008, Resolute was corresponding directly with Pepsi's counsel about their claims. Even prior to that, back in 2005, Pepsi was receiving our payments on Resolute checks, with the payor identified, in bold, as "Resolute Management (as administrator of the run-off of certain liabilities of [underlying insurer's name omitted])".

9. What is your explanation or response to on the jury finding in the Celanese case in Massachusetts (a jury found Resolute had committed a willful – unfair or deceptive act towards Celanese). What internal actions were taken to prevent further willful acts? Have there been significant management changes at Resolute since this ruling? Are changes necessary in your view?

As I understand it, in that case, there were two "coverage-in-place" transactions involving the corporate policyholder, Celanese. These are settlements where insurers enter into an arrangement with a policyholder that resolves a host of insurance coverage and allocation issues by formalizing upfront a protocol for the payment of claims and expenses going forward. In this case, there was a coverage-in-place agreement concerning "photo-resist" claims, and a separate one for asbestos and other chemical claims. Both agreements required Celanese to meet certain requirements, such as providing documentation for cost reimbursement requests. We disputed whether Celanese complied with these requirements. The jury determined that while we were not malicious and our position was reasonable as to the asbestos and other chemical claims agreement, we acted unreasonably as to the photo-resist claims agreement. While we were disappointed with their decision, we paid the award, including attendant interest.

10. In any of the Berkshire related roles Mr. Ryan holds (in his capacities at Resolute, NICO, or as an executive with the reinsurance division)- how is he evaluated? How is he paid? Are there performance based incentives of any kind in place- or have their been in the past? What are the areas he can perform on now (or in the past) that would trigger any additional compensation or incentives?

It is the case that Mr. Ryan, as well as others who work at the reinsurance division, are not paid based on a bonus structure; compensation is based on a fixed salary that is reviewed each year.

We remain very thankful for your time and consideration and look forward to your response and would request you get back to us by **next Tuesday, August 20th or before**. To reinforce, we continue to welcome the chance to include a full interview with you on camera should you or anyone at Berkshire be interested.

Mark Greenblatt, Scripps News
Washington D.C.

From: Greenblatt, Mark [<mailto:mark.greenblatt@shns.com>]

Sent: Tuesday, September 03, 2013 9:02 AM

To: Ajit Jain

Subject: Re:

Ajit,

Thank you for your comments to date. We do hope you will be willing to continue this conversation and offer more clarity on some items for us and for the public in general in advance of a release of our report, which we now expect to be in the near future. There are a number of areas we wanted to make sure we gave you an additional opportunity to comment on or to add further perspective for the public.

1. Our initial inquiries on this matter were through Berkshire Hathaway's main line, and we were routed to Berkshire Hathaway's CFO, who connected you to us. We note, you are now saying you are not speaking for Berkshire Hathaway Inc. or Mr. Buffett. If you are not speaking for Mr. Buffett, can you make sure he, too, has a chance to weigh in personally on the matters at hand? I note that he, like you, has declined an interview but want to make sure he has the chance to write us as well-- as you have done-- if he so chooses. The same goes for Mr. Ryan-- or anyone who may speak on behalf of Berkshire Hathaway Inc. (if this is not your CFO or Mr. Buffett in your view).
2. You have stated that there have been four instances in "Resolute's" settlements and litigation where there have been findings of bad faith. When it comes to numbers, we find they have the most value for the public when put into larger context and larger perspective. Does this number include similar findings against National Indemnity or Counterparties- where Resolute is not named as a defendant but still acts as a claims handler?
 - a) How many instances has National Indemnity been found in a legal proceeding to have acted in bad faith (in regards to one of your run off transactions/ asbestos, pollution, health hazard transactions)?
 - b) How many instances has a counterparty of Berkshire's (an insurance company or policyholder Resolute is managing claims for) been found to have acted in bad faith, whether or not Resolute or National Indemnity were named as defendants specifically?
 - c) How many times have either Resolute, National Indemnity, or a counterparty settled a case where bad faith is alleged involving any policy for which Berkshire manages claims handling for (in regards to asbestos, pollution, or health hazard claims)?
 - d) How many overall allegations have there been of bad faith against Resolute, National Indemnity, or one of the counterparties of which you manage claims for in regards to asbestos, pollution, or health hazard policies?

3. You have elected to not identify or name the four cases in which Resolute has been found to have acted in bad faith. Our understanding is a finding of bad faith is more serious than just having been found to take an “unreasonable” position-- but rather, includes a finding that an unfair or deceptive action took place in a knowing or willful manner. I wanted to offer you another chance to share the names of the cases with us, in the interest of transparency. Or, is it the case that Resolute or NICO have taken the position that one or more of these findings should be under seal? We believe the public should have the right to know what the cases are-- read the findings-- and make up their own mind (hopefully in perspective with the full perspective of the numbers we are asking for above). What do you believe?
4. You have stated that there have been at least 25 transactions involving long tail asbestos, pollution, or health hazard claims. You have also stated Berkshire Hathaway intends to be very open and public about these deals. In that regard, will you kindly provide the 25 names of the insurance companies/counterparties from which Berkshire has acquired asbestos, pollution, or health hazard liabilities or claims handling responsibility from?
5. Of the 25 transactions you are aware of-- to date, what is the total cap in liability on asbestos, pollution, or health hazard claims Berkshire has acquired since the inception of these transactions, before any payouts? How much liability do you presently hold today, after any payouts?
6. In the case of Liberty Life Insurance Vs. OneBeacon/Resolute- it is the case Resolute is alleged to have taken an unreasonable position in bad faith on an asbestos related claim. It is alleged Resolute’s position was not in line with Liberty, Liberty’s other insurance carriers, trial counsel, or even an independent mediator-- and that Resolute “refused” to raise its “much lower” position of less than a combined \$78,000 for three individuals (or, less than \$26k a piece to cover lifelong medical expenses). The entire federal case and related documents that came out in discovery are now sealed. I understand Resolute settled this case. What is your position on the allegations from the case-- and why the federal court file should be sealed?
7. In regards to Mr. Ryan, I wanted to follow up. While I note that we initially asked about “performance based incentives of any kind” he may receive now or have ever received in the past, I note your answer only touched specifically on “bonuses” you state he does not receive today. I wanted to just clarify this point-- are they any incentives of any kind Mr. Ryan receives in any of his jobs with Resolute, NICO, or the Berkshire Hathaway reinsurance group? Have there ever been?
8. Can Mr. Ryan qualify for a higher fixed salary by doing anything now or in the future? What if he meets certain goals? How are his raises determined?
9. Sworn testimony has come out in several cases related to “targets” which Resolute, under Mr. Ryan, set for annual payouts. In the Celanese case, where similar testimony was offered, a jury found Resolute had committed an unfair or deceptive act in a willful or knowing manner. What are these targets-- and do they still exist today in any form?
10. In the case of Estee Lauder vs. OneBeacon, it is alleged that a court ordered a “prompt” payment in 2009 to Estee Lauder, but that it took until 2012 to make a 5 million dollar payment. A judge has now allowed a ‘bad faith’ allegation to be tacked on to the allegation. What is your explanation for the three year length of time it took to make the payment? What is your position the new allegation of bad faith?

11. Ford is set to go to trial with National Indemnity soon. What is your position on their allegations?
12. In a recent mesothelioma case in New York involving Cesar Serna vs. a boilermaker company called Burnham, Mr. Serna's lawyers allege that Resolute plays a very significant role in authorizing settlements that Burnham could have made at any time pre-trial. Mr. Serna's lawyers say three other non-Resolute related parties responsible for Mr. Serna's cancer evaluated the merits of the case and the short amount of time Mr. Serna has left to live, and settled -- paying an undisclosed amount to Mr. Serna without a trial. His lawyers allege a fourth company, called Burnham, has its negotiations and authorized settlements largely controlled by Resolute. They allege Burnham/Resolute took an unreasonable position in negotiations, forcing delays and a trial that other defendants did not elect to partake in. At trial, I am told, a jury ruled Mr. Serna had been seriously harmed by Burnham- and issued a large multi-million dollar verdict. What is your position on this case? Has Resolute authorized payment of the verdict to Mr. Serna? Considering that Mr. Serna may not have long to live- does Resolute plan to authorize payment in the near future or promptly negotiate a lower amount? Or does it plan to recommend an appeal?

We may be releasing this story in the very near future. I suspect this will be the last round of questions prior to our release. In order to make sure your responses are taken into consideration in advance of the release of a first report on this subject-- we kindly request you get back to us by close of business, **tomorrow (Wednesday, Sept. 4)**. Should you not be able to make that deadline, we still want to hear from you as soon as possible thereafter for possible inclusion in follow up reporting we may do.

Finally, we continue to offer Mr. Buffett, you, or Mr. Ryan an opportunity to interview with us now or in the future (we note- Mr. Buffett has conducted many interviews with reporters).

Best,

Mark Greenblatt

Scripps News National Bureau

From: Ajit Jain
Sent: Tuesday, September 03, 2013 6:04 PM
To: Greenblatt, Mark
Subject: RE: Re:

Mark:

Thank you for your continuing interest, but I am now traveling out of the country on business for several weeks, and would not be in a position to offer you a response before your deadline. In any case, having quickly looked at your additional questions, I do believe I have responded to many of them, or to similar questions, so I hope you have found that helpful.

Kind regards,

Ajit Jain

From: Greenblatt, Mark

Sent: Friday, September 6, 2013 10:12 AM

To: Ajit Jain

Would you at a minimum share the 25 insurance companies you have made agreements with to acquire or manage their asbestos, pollution, health hazard claims?